

# Chapter One

## Introduction

### **Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005**

1.1 The Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005 (the bill) was introduced into the Senate on 23 June 2005. On 10 August 2005, the bill was referred for inquiry to the Rural and Regional Affairs and Transport Legislation Committee (the committee) on the recommendation of the Senate Selection of Bills Committee.

1.2 A similar bill entitled the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003 had been introduced into the previous Parliament in June 2003. It was the subject of an inquiry by the committee's predecessor which reported in June 2004.

1.3 The Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003 lapsed with the proroguing of the 40<sup>th</sup> Parliament.<sup>1</sup> The differences between the 2005 bill and that which lapsed arise from recommendations made by the committee's predecessor on the initial bill.

### **Conduct of the inquiry**

1.4 The committee approached those who had participated in the June 2004 inquiry inviting comment to the revised bill. It also agreed to consider the submissions made and evidence provided in the 2004 inquiry as part of this inquiry.

1.5 The committee sought further public comment by advertising the inquiry in *The Australian* on 17 and 31 August 2005. The committee received two submissions (see Appendix 1).

1.6 The committee held a public hearing in Canberra on 29 August 2005. It heard evidence from a number of witnesses, including the Flight Attendants' Association of Australia, Virgin Blue Airlines Pty Ltd, the Australian Federation of Air Pilots and the Department of Transport and Regional Services (see Appendix 2). All the evidence presented to the committee is available on the parliament's homepage at <http://www.aph.gov.au>

1.7 The committee appreciates the time and work of all those who provided oral and written submissions to the inquiry. Their work has assisted the committee considerably in its inquiry.

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1 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 1

## Purpose of the bill

1.8 The bill amends the *Civil Aviation Act 1988* to permit the mutual recognition of certain aviation-related safety certification between Australia and New Zealand in relation to large aircraft (greater than 30 seats or 15,000 kgs).<sup>2</sup>

1.9 New Zealand has implemented corresponding amendments to its *Civil Aviation Act 1990* by the addition of 'Part 1A – ANZA Mutual Recognition'. The New Zealand legislation passed into law on 18 March 2004.<sup>3</sup>

1.10 The bill and its associated regulations is the first step toward mutual recognition of aviation safety certificates between Australia and New Zealand. It provides for the mutual recognition of Air Operator Certificates (AOCs) for large aircraft, as issued by the Civil Aviation Safety Authority (CASA) in Australia and the Civil Aviation Authority of New Zealand (CAANZ).

1.11 The possession of an AOC permits an air operator to conduct commercial activities. Aircraft operators wishing to operate in both Australia and New Zealand are currently required to hold, and comply with, two AOCs issued by their respective aviation safety regulators (CASA and CAANZ). The *Explanatory Memorandum* notes that:

This results in duplication, complexity and added administrative and financial burdens on operators, which may in turn deter operators from establishing air services in the other country. This is inconsistent with the intention of the 'open skies' Air Services Agreement to promote competition among Australian and New Zealand operators, including on domestic routes.<sup>4</sup>

1.12 Under the new legislative arrangements, CASA will be able to approve an AOC for an Australian operator that will authorise operations in both Australia and New Zealand and will be accepted for use by New Zealand authorities. This particular AOC will be termed an Australian AOC with ANZA privileges – where ANZA means Australia and New Zealand Aviation.<sup>5</sup> Similar arrangements will allow New Zealand operators with a New Zealand AOC with ANZA privileges to operate on Australian routes.

1.13 The particular aviation authority that issues the AOC (with ANZA privileges) is the authority that will monitor its use by the operator – whether its operations are in Australia or New Zealand. This means that Australian operators choosing to hold an

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2 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 2

3 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 3

4 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005*, p. 4

5 Second Reading Speech, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005*, p. 2

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AOC with ANZA privileges issued by CASA will be subject to regulatory oversight by CASA – even when operating in New Zealand, and vice versa.<sup>6</sup>

1.14 Any extension of mutual recognition to certificates other than AOCs (for the operation of large aircraft) will be achieved by further amendment to the *Civil Aviation Act 1988*. This provision implements recommendation 2 of the committee's report on the 2003 bill.<sup>7</sup>

## **Provisions of the bill**

### *Mutual recognition*

1.15 Schedule 1 contains the new provisions that will implement the mutual recognition arrangements with New Zealand.<sup>8</sup>

1.16 Items 2 and 3 define ANZA activities in Australian territory and New Zealand territory, respectively.<sup>9</sup> ANZA is the acronym for Australia and New Zealand Aviation.

1.17 Item 4 defines ANZA mutual recognition agreements as being 'the agreement or arrangement, or agreements or arrangements, as amended and in force from time to time, identified in regulations made for the purposes of this definition'.<sup>10</sup>

1.18 The ANZA mutual recognition agreements will be identified in Regulations. It is envisaged that:

...the principal arrangement defining the scope of the scheme will be in the form of an instrument of less-than-treaty status. The arrangement will set out joint understandings on the application of mutual recognition between the respective Governments. It will cover such key issues as the mutual recognition principle; set out the scope of the mutual recognition commitment; identify procedures to be followed in relation to temporary stop notices; allow for mutual assistance with enforcement; and cover future extension of mutual recognition arrangements. At this stage the Governments have agreed that ANZA mutual recognition should only apply to aircraft with greater than 30 seats or more than 15,000kg.<sup>11</sup>

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6 Second Reading Speech, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005*, p. 2

7 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005*, p. 1

8 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005*, p. 14

9 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 9

10 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 9

11 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005*, p. 16

### *Temporary stop notices*

1.19 A new section – 28D – will administer CASA's power to issue a temporary stop notice to a holder of a New Zealand AOC with ANZA privileges.

1.20 The bill includes a provision which allows a regulator to issue a temporary stop notice to an operator holding an AOC with ANZA privileges issued by the other regulator, who is normally responsible for regulating the safety of its operations. Temporary stop notices require the holder to cease all activity, and would only be issued if the safety regulator considered there was a serious risk to flying safety.

### **Scrutiny of Bills**

1.21 The Senate Scrutiny of Bills Committee has the responsibility for examining all legislation that comes before the Senate. Its terms of reference include matters relating to rights and liberties and also parliamentary scrutiny.

1.22 Item 2 in the table to subclause 3(1) in the bill provides that provisions relating to mutual recognition will commence on 'a single day to be fixed by Proclamation' with no limit specified within which the bill must commence in any event.<sup>12</sup>

1.23 The Scrutiny of Bills Committee made specific comments in relation to this item:

The Committee takes the view that Parliament is responsible for determining when laws are to come into force, and that commencement provisions should contain appropriate restrictions on the period during which legislation might commence.<sup>13</sup>

1.24 The Scrutiny of Bills Committee noted the statement in the explanatory memorandum that the deferred commencement is 'to enable the signing of the inter-governmental arrangement on mutual recognition by the Governments of Australia and New Zealand.' At the same time however, the Scrutiny Committee sought the Minister's advice as to whether the commencement clause should not also be subject to a provision that, if the agreement has not been signed by some fixed date, the Act will be automatically treated as having been repealed.<sup>14</sup>

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12 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005*, p. 14; Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 8/05*, p. 8

13 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 8/05*, p. 8

14 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 8/05*, p. 9